



**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

**24 CFR Part 1000**

**[Docket No. FR-5650-F-14]**

**RIN 2577-AC90**

**Native American Housing Assistance and Self-Determination Act; Revisions to the Indian Housing Block Grant Program Formula**

**AGENCY:** Office of the Assistant Secretary for Public and Indian Housing, HUD.

**ACTION:** Final rule.

**SUMMARY:** This final rule revises the Indian Housing Block Grant (IHBG) Program allocation formula authorized by section 302 of the Native American Housing Assistance and Self-Determination Act of 1996, as amended (NAHASDA). Through the IHBG Program, HUD provides federal housing assistance for Indian tribes in a manner that recognizes the right of Indian self-determination and tribal self-government. HUD negotiated this final rule with active tribal participation and using the procedures of the Negotiated Rulemaking Act of 1990. The regulatory changes reflect the consensus decisions reached by HUD and the tribal representatives on ways to improve and clarify the current regulations governing the IHBG Program formula.

**DATES: Effective Date:** **[Insert date 30 days after date of publication in the FEDERAL REGISTER].**

**FOR FURTHER INFORMATION CONTACT:** Heidi J. Frechette, Deputy Assistant Secretary for Native American Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Room 4126, Washington, DC 20410, telephone number 202-401-7914 (this is not a toll-free number). Hearing - or speech-impaired

individuals may access this number via TTY by calling the toll-free Federal Relay Service at 1-800-877-8339.

## **SUPPLEMENTARY INFORMATION:**

### **I. Background**

The Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4101 et seq.) (NAHASDA) changed the way that housing assistance is provided to Native Americans. NAHASDA eliminated several separate assistance programs and replaced them with a single block grant program, known as the Indian Housing Block Grant (IHBG) Program. NAHASDA and its implementing regulations, codified at 24 CFR part 1000, recognize tribal self-determination and self-governance while establishing reasonable standards of accountability. Reflective of this, section 106 of NAHASDA provides that HUD shall develop implementing regulations with active tribal participation and using the procedures of the Negotiated Rulemaking Act of 1990 (5 U.S.C. 561-570).

Under the IHBG program, HUD makes assistance available to eligible Indian tribes for affordable housing activities. The amount of assistance made available to each Indian tribe is determined using a formula developed as part of the NAHASDA negotiated process. Based on the amount of funding appropriated for the IHBG program, HUD calculates the annual grant for each Indian tribe and provides this information to the Indian tribes. Indian tribes are required to submit to HUD an Indian Housing plan that includes, among other things, a description of planned activities and statement of needs. If the Indian Housing Plan complies with statutory and regulatory requirements, the grant is awarded.

Following the enactment of the Native American Housing Assistance and Self-Determination Reauthorization Act of 2008 (Public Law 110-411, approved October 14, 2008)

(NAHASDA Reauthorization Act) HUD established a negotiated rulemaking committee<sup>1</sup> that focused on implementing the NAHASDA Reauthorization Act and prior amendments to NAHASDA, except those provisions which govern the NAHASDA allocation formula. As a result of that negotiated rulemaking, HUD published a final rule on December 3, 2012 (77 FR 71513).

On July 3, 2012 (77 FR 39452) and September 18, 2012 (77 FR 57544), HUD announced its intent to establish a negotiated rulemaking committee for the purpose of reviewing the NAHASDA allocation formula regulations at 24 CFR part 1000, subpart D, and negotiating recommendations for a possible proposed rule modifying the IHBG formula. On July 30, 2013 (78 FR 45903), after considering public comment on the proposed membership, HUD published a Federal Register document announcing the final list of members of the IHBG Formula Negotiated Rulemaking Committee (Committee) and announcing the date of the first meeting of the Committee. The Committee consists of 24 designated representatives of tribal governments (or authorized designees of those tribal governments) which, as required by NAHASDA, reflects a balanced representation of Indian tribes geographically and based on size, and two HUD representatives.

In developing this final rule, the Committee met nine times. Committee meetings took place on August 27-28, 2013, September 17-19, 2013, April 23-24, 2014, June 11-13, 2014, July 29-31, 2014, August 26-28, 2014, August 11-13, 2015, January 26-27, 2016, and September 20-21, 2016. The Committee agreed to operate based on consensus rulemaking and its approved

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<sup>1</sup> 75 FR 423 (January 5, 2010).

charter and protocols. All of the Committee meetings were announced in the Federal Register and were open to the public.<sup>2</sup>

During this negotiated rulemaking, the Committee undertook a comprehensive review of the IHBG formula and statutory changes that needed to be addressed in the regulations. With the full and active participation of the tribes, HUD and the Committee identified certain areas of the IHBG formula that required clarification, were outdated, or could be improved and, on May 31, 2016, published a proposed rule (81 FR 34290). With the exception of changes to § 1000.330(b)(ii), the proposed rule reflected the consensus decisions reached by the Committee during the negotiated rulemaking process on the best way to address these issues.

The Committee convened for a 2-day meeting in Oklahoma City, OK, on September 20-21, 2016, to review and consider public comments received on the proposed rule. This final rule takes into consideration the public comments on the proposed rule, and makes some changes, based on the public comments, to the May 31, 2016, proposed rule. It also reflects the consensus decisions reached by HUD and the Committee.

## **II. Changes and Clarifications Made in This Final Rule**

This final rule follows publication of the May 31, 2016, proposed rule and takes into consideration the public comments received on the proposed rule. In response to the public comments, a discussion of which is presented in the following section of this preamble, and in further consideration of issues addressed at the proposed rule stage, HUD and the Committee are making the following regulatory changes at this final rule stage:

- HUD has decided not to move forward with the single non-consensus provision in the proposed rule; the adjustment to the American Community Survey (ACS) proposed in §

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<sup>2</sup> See, 78 FR 45903 (July 30, 2013); 78 FR 54416 (September 4, 2013); 79 FR 14204 (March 13, 2014); 79 FR 28700 (May 23, 2014); 80 FR 30004 (May 26, 2015); 80 FR 33157 (June 11, 2015); 81 FR 881 (January 8, 2016); 81 FR 57506 (August 23, 2016).

1000.330(b). HUD meaningfully considered the public comments and engaged in extensive additional analysis. HUD has decided that the adjustment does not do enough to address volatility associated with small areas to warrant its introduction as a non-consensus adjustment.

- The Committee agreed by consensus to add a new § 1000.318(d) to establish the eligibility criteria for Formula Current Assisted Stock (FCAS) units that are demolished and rebuilt. The provision provides that a unit demolished pursuant to a planned demolition may be considered eligible as a FCAS unit if, after demolition is completed, the unit is rebuilt within one year. The provision provides that demolition is completed when the site of the demolished unit is ready for rebuilding and allows IHBG recipients to request approval for a one-time, one-year extension based on the formula factors in section 302(c)(1) of NAHASDA.
- The Committee agreed to revise § 1000.329(c) which requires that a tribe receiving Minimum Total Grant Allocation of Carryover Funds, certify the presence of households at or below 80 percent of median income, to more closely parallel a similar provision codified at § 1000.328(b)(2).
- The Committee agreed to clarify the undercount adjustment to the U.S. Decennial Census for Reservation and Trust Lands in § 1000.330(b). Specifically, the Committee agreed to change “Indian Lands in Remote Alaska” to “For Remote Alaska as designated by the U.S. Census Bureau, Alaska Formula Areas in Remote Alaska shall be treated as Reservation and Trust Lands for purposes of this paragraph”.

### **III. The Public Comments**

The public comment period for this rule closed on August 1, 2016, and HUD received 22 comments. Included in these 22 comments were 2 sets of identical comments; one set that contained 7 identical comments and a second set that contained 2 identical comments. Comments were submitted by federally recognized Indian tribes, tribal and regional housing authorities, TDHEs, associations comprised of tribes, tribal housing authorities, a law office, a nonprofit devoted to issues of race and ethnicity, and members of the public.

As discussed in this preamble, the Committee met on September 20 and 21, 2016, to review and consider responses to the public comments. This section of the preamble addresses the significant issues raised in the public comments and organizes the comments by subject category, with a brief description of the issue, followed by the Committee's response.

**A. Comments regarding Non-Consensus Provision to Control Total Weights within ACS (§ 1000.330(b))**

Comment: Control weights within the ACS not a valid measure of other variables.

Several commenters expressed concern with the adjustment of § 1000.330(b) and stated it is not reasonable to assume that an undercount of one variable, American Indian and Alaska Native (AIAN) persons, should be applied to the other variables.

Response: The Committee acknowledges this was a non-consensus decision taken by HUD. HUD appreciates the comment. HUD proposed the adjustment to reduce some of the likely error in the ACS for small areas caused by county based sampling in the ACS and to address the undercount in the base Decennial Census that is used as a core component of the weighting of ACS data. After careful consideration, however, HUD has decided not to move forward with the adjustment. HUD has determined that it does not do enough to address volatility associated with small areas to warrant its introduction as a non-consensus adjustment.

Comment: Opposition to implementing a non-consensus adjustment to the ACS data.

Several commenters expressed disappointment with HUD in proposing to implement the reweighting adjustment that is part of § 1000.330(b) despite broad opposition from tribal Committee members. The commenters urged HUD to respect the perspective of the majority of the Committee tribal members and not implement the reweighting proposal. Other commenters stated that HUD should not unilaterally move forward with its own proposals if no consensus is found but rather should rely on the existing language of the regulations since that approach was the result of a prior consensus between HUD and the tribes.

Several commenters also stated that they do not support the implementation of any non-consensus items, and referred to the adoption of the ACS adjustment. Several of these commenters also concluded that implementing a non-consensus item severely dilutes the significance of this process, is not a sign of negotiating in good faith, and is inconsistent with what constitutes Government-to-Government consultation. One of the commenters also stated that the summary section of the proposed rule was inaccurate by stating that the proposed regulatory changes reflect the consensus decision of the Committee since the adoption of the data source itself was not made by consensus, and recommended that HUD revise the sentence to reflect that the proposal included regulatory changes that did not achieve consensus.

Response: HUD appreciates the concerns of the commenters but disagrees with the suggestion that moving forward unilaterally with this non-consensus item reflects a lack of good faith or detracts from the Government-to-Government relationship that HUD has with the tribes. HUD has agreed, however, to remove the ACS adjustment (control total weights within the ACS).

**B. Comments regarding Minimum Total Grant Allocation of Carryover Funds (§ 1000.329).**

Comment: The Minimum Total Grant Allocation of Carryover Funds is inconsistent with NAHASDA. One commenter expressed opposition to the Minimum Total Grant Allocation of Carryover Funds stating that it is an arbitrary allocation rather than a need-based allocation, as required by NAHASDA. The commenter stated that adjusting the formula simply because carryover funds are added is a departure from the need-based model and will mean funding is withheld from tribes with more demonstrable need. The commenter suggested that if carryover funds cannot be added to the total allocation, then the funds should be used for drug clean-up grants.

Response: The Committee considered this comment and disagrees that § 1000.329 is arbitrary and not based on need. In considering the provision, the Committee sought to augment the minimum allocation amount already provided under the need component in § 1000.328 in the event there are funds voluntarily returned or not accepted by other tribes in the prior year (“carryover”). Just as § 1000.328 recognized that allocations in minimum amounts are needed if there exist eligible households below 80 percent of median income in the tribe’s formula area, proposed § 1000.329 simply recalibrates the minimum if there are carryover funds. The Committee also notes that HUD does not have the statutory authority to award funds specifically to fund drug control/elimination grants, however, grantees may choose to spend their IHBG funds to remediate units as doing so is an eligible activity in the IHBG program.

Comment: Minimum Total Grant Allocation of Carryover Funds should be clarified. Another commenter recommended that § 1000.329(c) be clarified to read, “To be eligible, a tribe



must certify in its Indian Housing Plan the presence of any eligible households at or below 80 percent of median income.”

Response: The Committee considered this comment and agrees that § 1000.329(c) be clarified to parallel § 1000.328.

### **C. Comments regarding the Data Sources for the Need Variables (§ 1000.330).**

Comment: Counting and averaging of the U.S. Decennial Census data. Several commenters recommended the U.S. Decennial Census data be adjusted for both over and undercounts for accuracy. The commenters also requested clarification on who determines what is “significant” since it is not defined in the regulations. Other commenters recommended that HUD must determine the actual undercounts on a reservation-by-reservation basis instead of utilizing an average undercount for its adjustment.

Response: The Committee considered these comments and agreed that the regulation should not make adjustments to add for any statistically significant overcount. The Committee during its eighth session considered how to address undercounts and overcounts reported by the U.S. Census Bureau. The Committee, by consensus, determined that adjustments to data should be made for statistically significant undercounts. The Committee did not reach consensus on any adjustments to data based upon overcounts. The Census reports reviewed during the convening of the Committee did not indicate any statistically significant overcounts. The U.S. Census Bureau determines whether overcounts or undercounts are statistically significant. Currently there is no way to determine actual undercounts or overcounts on a reservation-by-reservation basis.

Comment: The term “Indian Lands” is ambiguous and needs to be clarified in the undercount adjustment to the U.S. Decennial Census. Several commenters stated that the term

“Indian Lands” in § 1000.330(b) needs to be clarified as it pertains to Alaska Native villages in remote Alaska. One commenter stated that the term was not meant to mean “Indian Country” but was meant to refer to the lands within the formula area of the villages (Alaska Native Village Statistical Areas). The commenter recommended that the Committee not change this section if this is the understanding of how this term would be interpreted. The commenter requested, however, that the term be clarified as including those lands comprising the formula areas of the Alaska Native Villages if there is confusion regarding this interpretation.

Another commenter stated that aggravating the ambiguity is the absence of any definition of the term “Indian Lands” in NAHASDA or the NAHASDA regulations, and the various uses of the term by other Federal agencies (e.g., the Department of Energy under the Alaska Native Claims Settlement Act, 25 U.S.C. 3501). This commenter stated that there are no reservation or trust lands in Remote Alaska other than the Metlakatla Reservation, and concluded that confining the term to reservations and trust lands in this unique context would render the provision meaningless. The commenters asserted that the Committee adopted the term “Indian Lands” in the committee briefings to also include Alaskan Native Village areas in remote Alaska and proposed a documented definition or a technical amendment specifically stating that Alaskan Native Villages or Indian Lands in remote Alaska shall be treated as reservation and trust lands.

Response: The Committee agreed with the commenters on the ambiguity of the term “Indian Lands,” and clarified the regulation at § 1000.330 by changing “Indian Lands in Remote Alaska” to “For Remote Alaska as designated by the U.S. Census Bureau, Alaska Formula Areas in Remote Alaska shall be treated as Reservation and Trust Lands” for purposes of this paragraph.

Comment: Require HUD to issue a report on data source and update data source if necessary (Proposed § 1000.330(d)). A commenter recommended that the volatility control provision, in §1000.331, be retained if HUD proceeds with using the ACS, as adjusted, to determine the variables described in § 1000.324. The commenter also recommended that the rule require HUD to renegotiate this provision if it determines that the use of ACS data or U.S. Census Bureau county level population estimates for Native Americans results in inaccurate figures. Specifically, the commenter recommended the addition of the following provision:

§ 1000.330(d). After fiscal year 2018 but before fiscal year 2023, HUD shall prepare a report on the use of the data sources in this Section, including whether the data sources provide reliable information on the funding variables described on § 1000.324, and provide tribes an opportunity to comment on the report. If the report determines that the data sources used in this section result in unreliable data, HUD shall propose a more reliable data source.

Response: The Committee considered this comment and agreed not to add the language proposed by the commenter. In reaching this decision, the Committee notes that the language recommended is ambiguous. Additionally, the IHBG Negotiated Rulemaking Data Study Group extensively evaluated all data sources used in the formula during negotiated rulemaking. The resulting report outlining the Committee's Data Study Group's process and final recommendations to the Committee was published with the proposed rule.

Comment: The American Community Survey (ACS) data is unreliable. One commenter stated that they did not support § 1000.330(b)(ii) because the ACS is neither reflective nor representative of the commenter's tribal community. The commenter also stated that the flaws in the ACS data cannot be fixed by a weighting that uses the ACS count of American Indian and

Native persons. Another commenter questioned the accuracy of ACS data given the sampling, response and inclusion rates, as well as its failure to capture tribal enrollment information. The commenter concluded that reliance on these data would harm poorer tribes with the worst housing, and thus disproportionately affect the funding accessible to them via the need component of the IHBG funding formula.

Response: The Committee's Data Study Group did a thorough review of the ACS as a data source. Although consensus was not achieved on using the ACS as a data source, HUD has determined that the ACS is the most current and accurate data available for measuring the need for funding under the IHBG. The ACS data are more current than the data currently being used in the formula and are available for all eligible tribes, as discussed in the final Data Study Group Report. HUD recognizes that the ACS data does have some limitations. In addition, the 4.88 percent undercount of the 2010 Decennial Census for Reservation and Trust Lands is potentially present in the ACS because the ACS uses the Decennial Census, adjusted for post Census population growth, as its base data for weighting the ACS.

HUD is committed to work with the Census Bureau to improve the accuracy of the counts. Tribes may still challenge the ACS data.

#### **D. Comments regarding Volatility Control (§ 1000.331).**

Comment: The Committee should clarify the volatility control provision. Several commenters stated that a strict construction of § 1000.331(a) would defeat the intent of the Committee in agreeing to the provision. According to these commenters, the intent of § 1000.331(a) was to limit the impact of adopting a new data source (ACS) on those tribes that will be significantly and adversely affected by that conversion. The commenters wrote that as written, however, the relief would only be available if the tribe can show that the greater than 10

percent needs grant decline occurred “solely as a direct result of the introduction” of the ACS.

The commenters stated that the record of the Committee proceedings indicates that was not the Committee’s intent. One commenter presented several examples, including one which provided that if a tribe suffered a 65 percent reduction and can trace only 64.9 percent of its reduction to adoption of the ACS it would be disqualified from receiving any volatility control assistance, because its decline would not have been “solely as a direct result of the introduction” of ACS. The commenters recommended that § 1000.331(a) be revised by substituting “primarily as a result” for “solely as a direct result.” These same commenters also recommended that the intent of § 1000.331(a) be clarified by adding a definition for “primarily as a result” to read, “As used in this section, “primarily as a result” means that the introduction of a new data source, in-and-of-itself, would result in greater than a 10 percent decline in the tribe’s need component allocation, irrespective of any declines attributable to causes other than introduction of that data source.”

Response: Ensuring that grantees have stable allocations is a priority for the Committee. The original intent of § 1000.331 was to protect tribes against significant fluctuations with the introduction of the Decennial Census and ACS data. When HUD introduces a new data set, HUD will not apply volatility control. When HUD introduces a new data source, HUD will apply volatility control. When HUD first introduces ACS data into the IHBG formula in Fiscal Year 2018, HUD will apply volatility control. When a new ACS data set is available from year to year, HUD will not apply volatility control. When new Decennial Census data is available and is introduced into the formula, HUD will apply volatility control (e.g., 2020 Decennial Census).

HUD understands, however, the concern expressed by the commenters. HUD is able to isolate the impact on tribes' funding allocations that is due to the introduction of the ACS as a new data source. This ability to isolate the impact, and apply the control on the basis of that impact alone alleviates the concern of the commenters. HUD will continue to apply the same methodology to calculate the impacts of introduction of a new data source to avoid the concerns raised by the commenters with the agreed upon language.

**E. Comments regarding Demolition and Rebuilding of Formula Current Assisted Stock (FCAS) Units (§ 1000.318(d))**

Comment: Recommended language for demolition and rebuilding should provide maximum flexibility to tribes. One commenter supported the preamble definition of demolition "as occurring only when a recipient voluntarily demolishes units in order to clear a site for a new replacement unit." The commenter also recommended that the Committee define "demolition" in a way as to provide maximum flexibility to tribes. Flexibility is important, according to the commenter, because a significant problem that many tribes face are housing units that are irreparably contaminated by methamphetamine production and tribes must engage in time-consuming testing of a substance that cannot be seen or smelled.

The second problem, according to the commenter, is the potentially limited time for rebuilding the home where the weather conditions can delay or completely halt construction from October through May. Tribes should not lose their FCAS funds if these homes are not rebuilt within the one-year time frame. The commenter recommended, therefore, a definition for demolition that takes these concerns into account and allows tribes and TDHEs maximum flexibility in rehabilitation and reconstruction of FCAS units that are destroyed or demolished due to events beyond the control of the tribe/TDHE.

Response: The Committee appreciates the commenter's recommendation to define demolition in a way that maximizes flexibility for tribes. As stated, the intent of § 1000.318(d) is to incentivize tribes to rebuild expeditiously within a reasonable time period. The Committee understands the unique construction constraints faced by some IHBG recipients due to short building seasons, units contaminated by methamphetamine or other contaminants, remote locations and high construction costs and has considered these factors in the structuring of the demolition provision.

Comment: Recommended language for demolition and rebuilding. Another commenter stated that section 302(b)(1)(C) of NAHASDA triggers a one-year time period at the time of demolition, regardless of how demolition occurs. The commenter stated that section 302(b)(1)(C) does not require completion of the unit within the one-year period, but requires that the construction process begin within one year of the demolition. Based on this interpretation of the statute, the commenter recommended that the Committee adopt the following language:

- If a FCAS unit is demolished, it will continue to be eligible as a FCAS unit if the following conditions are met:
  - Construction of a replacement unit begins within one year of the time the original unit is demolished. If the unit is demolished by the occurrence of a natural disaster or fire, demolition shall be defined to occur on the date of the event. If the unit is demolished by the voluntary act of the recipient, demolition shall be defined to occur on the date that the replacement unit is demolished to a point where construction can commence;

- The replacement unit is complete within 24 months from the commencement of construction, except that if more than 5 units are being replaced, the time for completion of the units shall be 36 months.

Response: The Committee appreciates the recommendation submitted by the commenter on the demolition provision pursuant to § 1000.318(d). The Committee considered the proposed language but ultimately concluded that the statute requires that rebuilding be completed within one year of the demolition. The Committee agreed by consensus, however, to a revised § 1000.318(d) that provides that the one-year clock does not begin until demolition is complete.

Comment: Recommended language for demolition and rebuilding based on defining the terms “demolish” and “rebuilds”. Another commenter wrote that the purposes of the statute is to create an incentive for tribes to expeditiously rebuild housing units that are so badly damaged, as to require demolition and to give tribes a reasonable period of time to rebuild. The commenter wrote that Congressional intent was to incentivize rebuilding in a reasonable time but balance that goal with the realities that Indian country suffers not only from remoteness but short construction seasons. The commenter recommended that the Committee define the terms “demolish” and “rebuilds” using a standard dictionary definition and consistent with Congressional intent. With regard to the term “demolish” the commenter stated that standard dictionary definitions convey a sense of completeness and define this term as requiring a deliberate, human, caused process. In defining “rebuilds” the commenter notes that the statute uses the present active tense. With these foundations, the commenter recommends that the Committee adopt the following provision:



- If an affordable housing unit is demolished and rebuilding occurs within 1 year of demolition of the unit, the unit may continue to be considered Formula Current Assisted Stock.
- As used in this subsection:
  - Demolition" means the intentional act or process of the tribe, and demolition occurs when the structure is completely destroyed and its component parts, including demolition debris, are removed from the site; and
  - Rebuilding occurs when the tribe has made substantial, initial, on-going site improvements to the site of the replacement housing unit, including laying or altering the foundation.

Response: The Committee appreciates the commenter's thoughtful responses on the demolition issue posed in the proposed rule. Specifically, the comments regarding the past and present tense of the terms "demolish" and "rebuilds" respectively, as used in the statute, offered the Committee a useful starting point for developing a revised section addressing demolition. The Committee also agrees that the purpose of the statute is to create an incentive for tribes to expeditiously rebuild housing units. The revised demolition regulation agreed to by consensus at § 1000.318(d) incorporates and builds on the comments provided.

#### **F. Other Issues and Comments.**

Comment: There is a need for a federally conducted National Tribal Survey. Several commenters recommended that tribes continue to find common ground on changes to the IHBG funding formula and push for the self-determined goal of building tribally driven data sources. These commenters also stated that it is the duty of HUD and the Federal government to assist

tribes in seeking data sources that most appropriately reflect and represent the conditions and characteristics of their tribal communities and that this includes providing tribes the training and technical assistance to develop their own tribal data sources for housing and community development purposes.

Other commenters recommended that HUD should consider developing or using a federally conducted national tribal survey to collect demographic and enrollment information for NAHASDA-eligible tribes. According to the commenters, a National Tribal Survey, jointly designed by HUD and tribes, would collect demographic data directly related to the IHBG formula. The commenters wrote that the survey could be administered by the Census Bureau under contract from HUD, much the same way the American Housing Survey is now done for special data related to public housing information. The commenters concluded that there would be many advantages to such a survey, including a focus on information essential for IHBG fund allocation, providing flexibility in survey design to accommodate future changes to the IHBG formula, and using said survey to inform a more accurate allocation of funds in other Indian programs like education and health care.

Response: The Committee emphasizes that the IHBG Negotiated Rulemaking Data Study Group examined the development of a National Tribal Survey that would rely on tribally driven data sources. The pros and cons of the Committee's analysis are presented in the Final Data Study Group Report and, more particularly, the individual data source evaluations in the appendices. No consensus could be reached on using any alternative to ACS data, including a National Tribal Survey. HUD has stated that it does not have the resources to design or administer a National Tribal Survey, or to audit data collection efforts to ensure that data from

tribal sources is being collected in a fair and equitable manner, and thus unusable in the IHBG formula.

Comment: Impact on other organizations that use the IHBG factors or data. One commenter responded to HUD's request for public comment regarding how the proposed changes to the IHBG formula would potentially impact nonprofits, state and local governments, and other organizations that are not IHBG recipients. The commenter stated that the effect of the IHBG formula on outside stakeholders should have no bearing on the implementation of changes to the IHBG formula. The commenter also stated that the purpose of the IHBG formula is to allocate federal Indian Housing resources to eligible recipients to address the housing needs of Alaska Native and American Indian families and that impact on other entities is not within the scope of factors that HUD may consider in the course of negotiating the IHBG formula.

Response: The Committee is aware that some organizations, such as the U.S. Department of Transportation, use the IHBG formula for various reasons. Nevertheless, the Committee agrees with the commenter that the effect of the IHBG formula on these outside stakeholders should have no bearing on whether such changes are implemented. As stated by the commenter, section 302 of NAHASDA delineates the factors that the Committee must consider in determining the formula. HUD is not authorized to consider in the course of negotiating the IHBG formula how elements of the formula might impact entities that are not IHBG recipients.

Comment: The negotiated rulemaking was successful. One commenter thanked everyone who was involved in the negotiated rulemaking process and described the process as thoughtful and deliberate, and the final product the best that could be expected given the limitations on current funding for the program. The commenter expressed support for all of the final proposed changes, and described the rule as necessary, fair and consistent with the mission

of the Committee and the IHBG Program overall, and developed in the spirit of compromise. The commenter concluded that moving to an updated data source is the single greatest achievement of this Committee and urged HUD to adopt this final language and begin implementation as provided in the proposed rule. Another commenter wrote to recognize the many significant, positive outcomes of this negotiated rulemaking. This commenter stated that despite the somewhat distributive nature of this process, HUD and tribes were able to reach consensus on numerous important issues, including the minimum allocations of carryover funds, the undisbursed funds factor, the volatility control and establishing adjustments for undercounts. Both commenters agreed that the negotiated rulemaking process was successful.

Response: The Committee appreciates these comments and agrees that this Negotiated Rulemaking was educational, productive and successful. The Committee also extends its appreciation to each tribal representative and to HUD leadership and staff for their hard work and dedication to the Negotiated Rulemaking process, and believes that this final rule reflects the thoughtful and deliberate work of everyone involved in this rulemaking. The Committee believes that the success of the Negotiated Rulemaking rests on the spirit of cooperation and hard work that tribal representatives and HUD leadership and staff brought to the negotiations.

#### **IV. Findings and Certifications**

##### Regulatory Review--Executive Orders 12866 and 13563

Under Executive Order 12866 (Regulatory Planning and Review), a determination must be made whether a regulatory action is significant and, therefore, subject to review by the Office of Management and Budget (OMB) in accordance with the requirements of the order. Executive Order 13563 (Improving Regulations and Regulatory Review) directs executive agencies to analyze regulations that are “outmoded, ineffective, insufficient, or excessively burdensome, and

to modify, streamline, expand, or repeal them in accordance with what has been learned.”

Executive Order 13563 also directs that, where relevant, feasible, and consistent with regulatory objectives, and to the extent permitted by law, agencies are to identify and consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public. This final rule was determined not to be a “significant regulatory action” as defined in section 3(f) of Executive Order 12866, and therefore was not reviewed by OMB.

#### Paperwork Reduction Act

The information collection requirements contained in this rule have been approved by OMB in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520) and assigned OMB Control Number 2577-0218. In accordance with the Paperwork Reduction Act, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless the collection displays a currently valid OMB control number.

#### Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 et seq.) generally requires an agency to conduct a regulatory flexibility analysis for any rule that is subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The requirements of this rule apply to Indian tribal governments and their tribal housing authorities. Tribal governments and their tribal housing authorities are not covered by the definition of “small entities” under the RFA. Accordingly, the undersigned certifies that this rule will not have a significant impact on a substantial number of small entities.

### Executive Order 13132, Federalism

Executive Order 13132 (entitled “Federalism”) prohibits, to the extent practicable and permitted by law, an agency from promulgating a regulation that has federalism implications and either imposes substantial direct compliance costs on state and local governments and is not required by statute, or preempts state law, unless the relevant requirements of section 6 of the Executive Order are met. This rule does not have federalism implications and does not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Executive Order.

### Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) (UMRA) establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments, and on the private sector. This rule will not impose any federal mandate on any state, local, or tribal government, or on the private sector, within the meaning of UMRA.

### Environmental Review

This rule is a statutorily required establishment of a rate determination that does not constitute a development decision that affects the physical condition of specific project areas or buildings sites. Accordingly, under 24 CFR 50.19(c)(6), this rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

### Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance Number (CFDA) for Indian Housing Block Grants is 14.867, and the CFDA for Title VI Federal Guarantees for Financing Tribal Housing Activities is 14.869.

## List of Subjects in 24 CFR Part 1000

Aged, Community development block grants, Grant programs-housing and community development, Grant programs-Indians, Indians, Individuals with disabilities, Public housing, Reporting and recordkeeping requirements.

Accordingly, for the reasons described in the preamble, HUD amends 24 CFR part 1000 as follows:

### **PART 1000—NATIVE AMERICAN HOUSING ACTIVITIES**

1. The authority citation for 24 CFR part 1000 continues to read as follows:

**Authority:** 25 U.S.C. 4101 et seq.; 42 U.S.C. 3535(d).

2. In § 1000.302, revise paragraph (2)(i) of the definition of “Formula area” to read as follows:

#### **§ 1000.302 What are the definitions applicable for the IHBG formula?**

\* \* \* \*

*Formula area.* \* \* \*

(2) \* \* \*

(i) For a geographic area not identified in paragraph (1) of this definition, and for expansion or re-definition of a geographic area from the prior year, including those identified in paragraph (1) of this definition, the Indian tribe must submit, on a form agreed to by HUD, information about the geographic area it wishes to include in its Formula Area, including proof that the Indian tribe, where applicable, has agreed to provide housing services pursuant to a Memorandum of Agreement (MOA) with the tribal and public governing entity or entities of the area, or has attempted to establish such an MOA, and is providing substantial housing services

and will continue to expend or obligate funds for substantial housing services, as reflected in its Indian Housing Plan and Annual Performance Report for this purpose.

\* \* \* \* \*

### **§ 1000.306 [Amended]**

3. In § 1000.306, remove paragraph (c).

4. Revise § 1000.310 to read as follows:

### **§ 1000.310 What are the components of the IHBG formula?**

The IHBG formula consists of four components:

- (a) Formula Current Assisted Stock (FCAS) (§ 1000.316);
- (b) Need (§ 1000.324);
- (c) 1996 Minimum (§ 1000.340); and
- (d) Undisbursed IHBG funds factor (§ 1000.342).

5. In § 1000.316, add paragraph (c) to read as follows:

### **§ 1000.316 How is the Formula Current Assisted Stock (FCAS) Component developed?**

\* \* \* \* \*

(c) *Conversion.* Conversion of FCAS units from homeownership (Mutual Help or Turnkey III) to low-rent or from low-rent to a home ownership program.

(1) If units were converted before October 1, 1997, as evidenced by an amended ACC, then those units will be counted for formula funding and eligibility purposes as the type of unit to which they were converted.

(2) If units were converted on or after October 1, 1997, the following applies:

(i) *Funding type.* Units that converted after October 1, 1997 will be funded as the type of unit specified on the original ACC in effect on September 30, 1997.



(ii) *Continued FCAS eligibility.* Whether or not it is the first conversion, a unit converted after October 1, 1997, will be considered as the type converted to when determining continuing FCAS eligibility. A unit that is converted to low-rent will be treated as a low-rent unit for purposes of determining continuing FCAS eligibility. A unit that is converted to homeownership will be treated as a homeownership unit for purposes of determining continuing FCAS eligibility.

(3) The Indian tribe, TDHE, or IHA shall report conversions on the Formula Response Form.

6. Amend § 1000.318 by redesignating paragraphs (b) and (c) as paragraphs (c) and (d), respectively, and adding paragraphs (b) and (e) to read as follows:

**§ 1000.318 When do units under Formula Current Assisted Stock cease to be counted or expire from the inventory use for the formula?**

\* \* \* \* \*

(b)(1) A Mutual Help or Turnkey III unit not conveyed after the unit becomes eligible for conveyance by the terms of the MHOA may continue to be considered Formula Current Assisted Stock only if a legal impediment prevented conveyance; the legal impediment continues to exist; the tribe, TDHE, or IHA has taken all other steps necessary for conveyance and all that remains for conveyance is a resolution of the legal impediment; and the tribe, TDHE, or IHA made the following reasonable efforts to overcome the impediments:

(i) No later than four months after the unit becomes eligible for conveyance, the tribe, TDHE, or IHA creates a written plan of action, which includes a description of specific legal impediments as well as specific, ongoing, and appropriate actions for each applicable unit that have been taken and will be taken to resolve the legal impediments within a 24-month period; and

(ii) The tribe, TDHE, or IHA has carried out or is carrying out the written plan of action;  
and

(iii) The tribe, TDHE, or IHA has documented undertaking the plan of action.

(2) No Mutual Help or Turnkey III unit will be considered FCAS 24 months after the date the unit became eligible for conveyance, unless the tribe, TDHE, or IHA provides evidence from a third party, such as a court or state or federal government agency, documenting that a legal impediment continues to prevent conveyance. FCAS units that have not been conveyed due to legal impediments on [**Insert date 30 days after date of publication in the FEDERAL REGISTER**] shall be treated as having become eligible for conveyance on [**Insert date 30 days after date of publication in the FEDERAL REGISTER**].

\* \* \* \* \*

(e) A unit that is demolished pursuant to a planned demolition may be considered eligible as a FCAS unit if, after demolition is completed, the unit is rebuilt within one year. Demolition is completed when the site of the demolished unit is ready for rebuilding. If the unit cannot be rebuilt within one year because of relative administrative capacities and other challenges faced by the recipient, including, but not limited to geographic distribution within the Indian area and technical capacity, the Indian tribe, TDHE or IHA may request approval for a one-time, one-year extension. Requests must be submitted in writing and include a justification for the request.

7. In § 1000.326, revise paragraph (a)(3), redesignate paragraph (c) as paragraph (d), and add a new paragraph (c) to read as follows:

**§ 1000.326 What if a formula area is served by more than one Indian tribe?**

(a) \* \* \*

(3) In cases where a State recognized tribe's formula area overlaps with the formula area of a Federally recognized Indian tribe, the Federally recognized Indian tribe receives the allocation for the formula area up to its population cap, and the State recognized tribe receives the balance of the overlapping area (if any) up to its population cap.

\* \* \* \* \*

(c) Upon receiving a request for expansion or redefinition of a tribe's formula area, if approving the request would create an overlap, HUD shall follow the notice and comment procedures set forth in paragraph (2)(ii) of the definition of "Formula area" in § 1000.302.

\* \* \* \* \*

8. Add § 1000.329 to read as follows:

**§ 1000.329 What is the minimum total grant allocated to a tribe if there is carryover funds available?**

(a) If in any given year there are carryover funds, then HUD will hold the lesser amount of \$3 million or available carryover funds for additional allocations to tribes with grant allocations of less than 0.011547 percent of that year's appropriations. All tribes eligible under this section shall receive a grant allocation equal to 0.011547 percent of that year's appropriations.

(b)(1) If the set-aside carryover funds are insufficient to fund all eligible tribes at 0.011547 percent of that year's appropriations, the minimum total grant shall be reduced to an amount which can be fully funded with the available set-aside carryover funds.

(2) If less than \$3 million is necessary to fully fund tribes under paragraph (a) of this section, any remaining carryover amounts of the set aside shall be carried forward to the next year's formula.

(c) To be eligible, an Indian tribe must certify in its Indian Housing Plan the presence of any households at or below 80 percent of median income.

(d) For purposes of this section, carryover funds means grant funds voluntarily returned to the formula or not accepted by tribes in a fiscal year.

9. Revise § 1000.330 to read as follows:

**§ 1000.330 What are the data sources for the need variables?**

(a) The sources of data for the need variables shall be data that are available and collected in a uniform manner that can be confirmed and verified for all AIAN households and persons living in an identified area. Until fiscal year 2018, the data used are 2000 U.S. Decennial Census data and any HUD-accepted Census challenges. The 2000 U.S. Decennial Census data shall be adjusted annually using IHS projections based upon birth and death rate data provided by the National Center for Health Statistics.

(b)(1) Beginning fiscal year 2018, the data source used to determine the AIAN persons variable described in § 1000.324(g) shall be the most recent U.S. Decennial Census data adjusted for any statistically significant undercount for AIAN population confirmed by the U.S. Census Bureau and updated annually using the U.S. Census Bureau county level Population Estimates for Native Americans. For Remote Alaska as designated by the U.S. Census Bureau, Alaska Formula Areas in Remote Alaska shall be treated as Reservation and Trust Lands, unless the U.S. Census Bureau includes Remote Alaska in their Census Coverage Measurement or comparable study. The data under this paragraph (b) shall be updated annually using the U.S. Census Bureau county level Population Estimates for Native Americans.

(2) Beginning fiscal year 2018, the data source used to determine the variables described in paragraphs (a) through (f) of § 1000.324 shall initially be the American Community Survey (ACS) 5-year Estimates.

(c) Indian tribes may challenge the data described in this section pursuant to § 1000.336.

10. Add § 1000.331 to read as follows:

**§ 1000.331 How will the impacts from adoption of a new data source be minimized as the new data source is implemented?**

(a) To minimize the impact of funding changes based on the introduction of a new data source under § 1000.330, in fiscal year 2018 and each year thereafter, if, solely as a direct result of the introduction of a new data source, an Indian tribe's allocation under the need component of the formula is less than 90 percent of the amount it received under the need component in the immediate previous fiscal year, the Indian tribe's need allocation shall be adjusted up to an amount equal to 90 percent of the previous year's need allocation.

(b) Nothing in this section shall impact other adjustments under this part, including minimum funding, census challenges, formula area changes, or an increase in the total amount of funds available under the need component.

(c) In the event of a decrease in the total amount of funds available under the need component, an Indian tribe's adjusted allocation under paragraph (a) of this section shall be reduced by an amount proportionate to the reduced amount available for distribution under the need component of the formula.

(d) Adjustments under paragraph (b) or (c) of this section shall be made to a tribe's need allocation after adjusting that allocation under paragraph (a) of this section.

11. Revise § 1000.336 as follows:

- a. In paragraph (a)(6), remove “and”;
- b. In paragraph (a)(7), remove the period and add in its place “; and”;
- c. Add paragraph (a)(8); and
- d. Revise paragraphs (d), (e), and (f).

The addition and revisions read as follows:

**§ 1000.336 How may an Indian tribe, TDHE, or HUD challenge data or appeal HUD formula determinations?**

(a) \* \* \*

(8) The undisbursed funds factor.

\* \* \* \* \*

(d) An Indian tribe or TDHE that seeks to appeal data or a HUD formula determination, and has data in its possession that are acceptable to HUD, shall submit the challenge or appeal in writing with data and proper documentation to HUD. An Indian tribe or TDHE may appeal the undisbursed funds factor no later than 30 days after the receipt of the formula determination. Data used to challenge data contained in the U.S. Census must meet the requirements described in § 1000.330(a). Further, in order for a census challenge to be considered for the upcoming fiscal year allocation, documentation must be submitted by March 30th.

(e) HUD shall respond to all challenges or appeals no later than 45 days after receipt and either approve or deny the appeal in writing, setting forth the reasons for its decision.

(1) If HUD challenges the validity of the submitted data HUD and the Indian tribe or TDHE shall attempt in good faith to resolve any discrepancies so that such data may be included in the formula allocation.

(2) If HUD denies a challenge or appeal, the Indian tribe or TDHE may request reconsideration of HUD's denial within 30 calendar days of receipt of HUD's denial. The request shall be in writing and set forth justification for reconsideration.

(3) HUD shall in writing affirm or deny the Indian tribe's or TDHE's request for reconsideration, setting forth HUD's reasons for the decision, within 20 calendar days of receiving the request. HUD's denial of a request for reconsideration shall constitute final agency action.

(4) If HUD approves the Indian tribe or TDHE's appeal, HUD will adjust to the Indian tribe's or TDHE's subsequent fiscal year allocation to include only the disputed fiscal year(s).

(f) In the event HUD questions whether the data contained in the formula accurately represents the Indian tribe's need, HUD shall request the Indian tribe to submit supporting documentation to justify the data and, if applicable, to provide a commitment to serve the population indicated in the geographic area.

12. Add § 1000.342 to subpart D to read as follows:

**§ 1000.342 Are undisbursed IHBG funds a factor in the grant formula?**

Yes, beginning fiscal year 2018. After calculating the initial allocation calculation for the current fiscal year by calculating FCAS, need, the 1996 Minimum, and repayments or additions for past over- or under-funding for each Indian tribe, the undisbursed funds factor shall be applied as follows:

(a) The undisbursed funds factor applies if an Indian tribe's initial allocation calculation is \$5 million or more and the Indian tribe has undisbursed IHBG funds in an amount that is greater than the sum of the prior 3 years' initial allocation calculations.

(b) If subject to paragraph (a) of this section, the Indian tribe's grant allocation shall be the greater of the initial allocation calculation minus the amount of undisbursed IHBG funds that exceed the sum of the prior 3 years' initial allocation calculations, or its 1996 Minimum.

(c) For purposes of this section, "undisbursed IHBG funds" means the amount of IHBG funds allocated to an Indian tribe in HUD's line of credit control system on October 1 of the fiscal year for which the allocation is made. For Indian tribes under an umbrella TDHE (a recipient that has been designated to receive grant amounts by more than one Indian tribe), if the Indian tribe's initial allocation calculation is \$5 million or more, its undisbursed IHBG funds is the amount calculated by multiplying the umbrella TDHE's total balance in HUD's line of credit control system on October 1 of the fiscal year for which the allocation is made by a percentage based on the Indian tribe's proportional share of the initial allocation calculation of all tribes under the umbrella.

(d) Amounts subtracted from an initial allocation calculation under this section shall be redistributed under the need component among all Indian tribes not subject to paragraph (a) of this section (while also retaining the 1996 Minimum).

13. Revise appendices A and B of part 1000 to read as follows:

#### **Appendix A to Part 1000—Indian Housing Block Grant Formula Mechanics**

This appendix shows the different components of the Indian Housing Block Grant (IHBG) formula. The following text explains how each component of the IHBG formula is calculated.

1. The first step in running the IHBG formula is to determine the amount available for allocation in the Fiscal Year (FY). It is the sum of:



(a) The FY appropriation for the IHBG program less amounts in the Appropriations Act mandated for purposes other than the formula allocation.

(b) The net amount, if any, made available as a result of corrections for over- or under-allocations in prior FYs.

(c) The amount, if any, made available pursuant to §1000.536.

(d) The amounts, if any, made available because tribes voluntarily returned, or did not accept, the amounts allocated to them in prior FYs, defined as "carryover" (see §1000.329).

2. If there is carryover as defined in § 1000.329, the amount of carryover up to \$3 million, is then held aside for allocation under the minimum total grant provisions of the formula (see 11 below).

3. The IHBG formula first calculates the amount each tribe is allocated under the Formula Current Assisted Stock (FCAS) component (See §§ 1000.310 through 1000.322). The FCAS component is comprised of two parts, Operating Subsidy (§ 1000.316(a)) and Modernization (§ 1000.316(b)).

(a) The Operating Subsidy component is calculated in two steps, as follows:

(i) Each tribe's counts of Low Rent, Homeownership (Mutual Help and Turnkey III), and Section 8 units are multiplied by the National Per Unit Subsidy for operations for that category of unit, which is a 1996 index for the type of unit that is adjusted for inflation (see § 1000.302 defining National Per Unit Subsidy). The amounts are summed to create an initial calculation of the operating subsidy component.

(ii) The initial operating subsidy component amount is then adjusted for local area costs, using an adjustment factor called the AELFMR. The AELFMR factor is calculated for each tribe in three steps. First, an Allowable Expense Level (AEL) factor is calculated by dividing the

tribe's AEL, a historic per-unit measure of operating cost, by the national weighted average AEL (see § 1000.302 defining Allowable Expense Level). Second, a Fair Market Rent (FMR) factor is calculated by dividing the tribe's FMR amount, an area-specific index published annually by HUD (see § 1000.302 Fair Market Rent factor), by the national weighted average FMR. Third, an AELFMR factor is created by assigning each tribe the greater of its AEL or FMR factor, and dividing that figure by the national weighted average AELFMR. In all cases, when the national average figure is calculated, tribes are weighted by the amount of their initial operating subsidy as calculated in 3(a)(i).

(See §1000.320).

(b) The Modernization component is determined using two methods depending on the number of public housing units that a tribe's housing authority operated prior to the Native American Housing and Self-Determination Act.

(i) For all tribes, the number of Low Rent, Mutual Help, and Turnkey III units are multiplied by the National Per Unit Subsidy for modernization from 1996 adjusted for inflation (see § 1000.302 defining National Per Unit Subsidy).

(ii) For Indian tribes with an Indian Housing Authority (IHA) that owned or operated fewer than 250 units on October 1, 1997, an alternative modernization component is calculated from the amount of funds the IHA received under the assistance program authorized by Section 14 of the 1937 Act (not including funds provided as emergency assistance) for FYs 1992 through 1997 (see §1000.316(b)(2)). If this alternative calculation is greater than the amount calculated in paragraph (a) above, it is used to calculate the tribe's modernization component.

(iii) The Modernization component is then multiplied by a local area cost adjustment factor based on the Total Development Cost (TDC) for the tribe (see § 1000.302) divided by the

national weighted average of all TDCs weighted by each tribe's pre-adjustment Modernization calculation in paragraph (b)(i) or (ii) above as applicable.

4. The total amounts calculated under the FCAS component for each tribe are then added together to determine the national total amount allocated under the FCAS component. That total is subtracted from the funds available for allocation less the carryover amount held aside for allocation under the minimum total grant provision in § 1000.329. The remainder is the total amount available for allocation under the need component of the IHBG formula.

5. The first step in calculating need component is identifying weighted needs variables and adjusting for local area cost differences.

(a) Need is first calculated using seven factors, where each factor is a tribe's share of the national totals for each of seven variables. The data used for the seven variables is described in § 1000.330. The person count variable is adjusted for statistically significant undercounts for reservations, trust lands and remote Alaska and for growth in population since the latest Decennial Census. The Population Cap provision in § 1000.302 Formula Area (5) is then applied. Needs data are capped if the American Indian and Alaska Native (AIAN) population counts exceed twice tribal enrollment unless a tribe can demonstrate that it serves more than twice as many non-tribal members as tribal members, in which case the cap is adjusted upward.

The factors are weighted as set forth in § 1000.324, as follows:

(i) 22 percent of the amount available for allocation under the needs component are allocated by the share of the total AIAN households paying more than 50 percent of their income for housing and living in each tribe's Formula Area (see § 1000.302);

(ii) 25 percent are allocated by the share of the total AIAN households living in overcrowded housing and/or without kitchen or plumbing in each tribe's Formula Area;

(iii) 15 percent are allocated by the share of the total AIAN households with an annual income less than or equal to 80 percent of Formula Median Income (see §1000.302) living in each tribe's Formula Area less the tribe's number of FCAS.

(iv) 13 percent are allocated by the share of AIAN households with annual income less than or equal to 30 percent of Formula Median Income living in each tribe's Formula Area;

(v) 7 percent are allocated by the share of AIAN households with annual income between 30 percent and 50 percent of Formula Median Income living in each tribe's Formula Area;

(vi) 7 percent are allocated by the share of AIAN households with annual income between 50 percent and 80 percent of Formula Median Income living in each tribe's Formula Area;

(vii) 11 percent are allocated by the share of AIAN persons living in each tribe's Formula Area.

(b) The result of these calculations for each tribe is then multiplied by a local area cost adjustment based on the Total Development Cost for the tribe (see § 1000.302) divided by the national weighted average of TDCs weighted by each tribe's pre-adjustment need calculation. (See § 1000.325).

6. Each tribe's initial need allocation amount is then adjusted under the minimum need allocation provision of §1000.328. Tribes that are allocated less than \$200,000 under the FCAS component of the IHBG formula and that certify the presence of any households at or below 80 percent of median income in their Indian Housing Plans will be allocated no less than a specified minimum under the needs component of the formula. The specified minimum amount shall equal 0.007826 percent of the appropriation for that FY after set-asides. The increase in funding

for the tribes allocated the minimum need amount is funded by a reallocation from other tribes whose needs allocation exceeds the minimum need amount. This is necessary in order to keep the total allocation within the appropriation level (See § 1000.328).

7. Whenever a new Data Source is first introduced, provision is made to moderate extreme impacts through phase down adjustments. For purposes of these adjustments, new data sources (see § 1000.331) include the initial introduction of the American Community Survey and 2010 Decennial Census in 2018, and the initial introduction of the 2020 Decennial Census when it becomes available. Tribes whose allocation under the need component decrease by more than ten percent in the first year of introduction will have that decrease moderated by subsequent adjustments, as required to prevent a drop of more than ten percent per year in the tribes' needs allocation attributable solely to the introduction of the New Data Source. After allocation adjustments are made under § 1000.331 for a FY, the needs allocation of an Indian tribe whose needs allocation increased as a result of the introduction of a New Data Source under § 1000.331 shall be adjusted downward proportionate to its share of the total increase in funding resulting from the introduction of a New Data Source to keep the overall needs allocation within available appropriations.

8. A tribe's preliminary total allocation for a grant is calculated by summing the amounts calculated under the FCAS and need components. This amount is compared to how much a tribe received in FY 1996 for operating subsidy and modernization under the 1937 Housing Act. If a tribe received more in FY 1996 for operating subsidy and modernization than it does under the IHBG formula allocation, its preliminary total allocation is adjusted up to the FY 1996 amount (See § 1000.340(b)). Indian tribes receiving more under the IHBG formula than in FY 1996

have their grant allocations adjusted downward to offset the upward adjustments for the other tribes.

9. The initial allocation amount for the current FY is calculated by adding any adjustments for over- or under-funding occurring in prior FYs to the allocation calculated in the previous step. These adjustments typically result from late reporting of FCAS changes, or conveyances which occur in a timely manner following the removal of units from eligibility due to conveyance eligibility.

10. The Undisbursed Funds Factor component is calculated based on the initial allocation amounts calculated above. Tribes with an initial allocation of \$5 million or more and undisbursed IHBG grant amounts (the amount available to the tribe in HUD's line of credit control on October 1 of the FY for which the allocation is being made) in an amount greater than the sum of the prior 3 years' initial allocation calculations will have their initial allocation amount adjusted down by the difference between the tribe's undisbursed grant amounts and the sum of its prior 3 years' initial allocation calculations. If this adjustment would bring the tribe below its FY 1996 minimum (see § 1000.340(b)), then the tribe will be allocated its FY 1996 minimum. The sum of the adjustments will be reallocated among the other tribes proportionally under the need component.

11. A final adjustment is made under § 1000.329 which allocates available carryover amounts up to \$3 million to achieve minimum total allocations. Tribes that certify in their Indian Housing Plans the presence of any eligible households at or below 80 percent of median income and whose current FY formula allocation after the Undisbursed Funds Factor adjustment determined in the preceding step is less than 0.011547 percent of the FY appropriation after set-asides, will have their allocation adjusted upwards to 0.011547 percent of the FY appropriation

after set-asides, or to a lesser percentage which can be achieved for all eligible tribes with available carryover held for this adjustment (see 2 above).

## **Appendix B to Part 1000—IHBG Block Grant Formula Mechanisms**

1. The first step in running the Indian Housing Block Grant (IHBG) formula is to determine the total amount available for allocation in the current Fiscal Year (FY).

$$\text{ALLOCAMT} = \text{APPROP} + \text{ADJ1} + \text{ADJ2} + \text{CARRYOVER}.$$

Where:

ALLOCAMT = amount available for allocation under the formula.

APPROP = current FY appropriation for the IHBG program less amounts in the Appropriations Act mandated for purposes other than the formula allocation.

ADJ1= net amount, if any, made available as a result of corrections for over-or under allocations in prior FYs.

ADJ2 = amount, if any, made available under §1000.536.

CARRYOVER = amounts, if any, made available because tribes voluntarily returned, or did not accept, the amounts allocated to them in prior FYs.

2. If there is carryover as defined in § 1000.329, the amount of carryover up to \$3 million, is then held aside for allocation under the minimum total grant provisions of the formula (see Step 10), then:

MGHOLD = amount set-aside for allocation under minimum total grant provision.

If CARRYOVER = 0, MGHOLD = 0.

If CARRYOVER > 0 and CARRYOVER ≤ \$3 million, MGHOLD = CARRYOVER.

If CARRYOVER > \$3 million, MGHOLD = \$3 million.

3. The FCAS component is calculated first. FCAS consists of two parts, Operating Subsidy (OPSUB) and Modernization (MOD), such that:

$$\text{FCAS} = \text{OPSUB} + \text{MOD}.$$

a. OPSUB is calculated in two steps, as follows:

(i) First, the number of Low-Rent, Section 8 and homeownership units are multiplied by the applicable national per unit subsidy (§ 1000.302 National Per Unit Subsidy). The amounts are summed to create an initial calculation of the Operating Subsidy component.

$$\text{OPSUB1} = [\text{LR} * \text{LRSUB}] + [(\text{MH} + \text{TK}) * \text{HOSUB}] + [\text{S8} * \text{S8SUB}].$$

Where:

OPSUB1 = initial calculation of Operating Subsidy component.

LR = number of Low-Rent units.

LRSUB = national per unit subsidy for Low-Rent units (\$2,440 \* INF).

INF = adjustment for inflation since 1995, as determined by the Consumer Price Index for housing.

MH + TK = number of Mutual Help and Turnkey III units.

HOSUB = national per unit subsidy for Homeownership units (\$528 \* INF).

S8 = number of Section 8 units.

S8SUB = national per unit subsidy for Section 8 units = (\$3,625 \* INF).

(ii) The initial Operating Subsidy component amount is then adjusted for local area costs, using an adjustment factor called the AELFMR. The AELFMR factor is calculated for each tribe in three steps. First, an AEL factor is calculated by dividing the tribe's Allowable Expense Level (AEL), a historic per-unit measure of operating cost, by the national weighted average AEL (see § 1000.302 defining Allowable Expense Level)

$$\text{AEL FACTOR} = \text{AEL} / \text{NAEL}.$$

Where:

AEL = local Allowable Expense Level.

NAEL = national weighted average for AEL, where the weight is a tribe's initial calculation of operating subsidy.

Second, an FMR factor is calculated by dividing the tribe's Fair Market Rent amount (FMR), an area-specific index published annually by HUD (see § 1000.302 Fair Market Rent factor), by the national weighted average FMR.

$$\text{FMR FACTOR} = \text{FMR} / \text{NFMR}.$$



Where:

FMR= local Fair Market Rent.

NFMR = national weighted average for FMR, where the weight is a tribe's initial calculation of operating subsidy.

Third, an AELFMR factor is created by assigning each tribe the greater of its AEL or FMR factor, and dividing that figure by the national weighted average AELFMR. In all cases, when the national average figure is calculated, tribes are weighted by the amount of their initial operating subsidy as calculated in 3(a)(i) above. (See § 1000.320).

$$\text{AELFMRFACTOR} = \text{final local area cost adjustment factor (AELFACTOR or FMRFACTOR)} / \text{NAELFMR}.$$

Where:

NAELFMR = national weighted average for greater of AEL Factor or FMR factor, where weight is a tribe's initial calculation of operating subsidy

Finally, the AELFMR factor is used to adjust the initial operating subsidy calculation for differences in local area costs.

$$\text{OPSUB} = \text{OPSUB1} * \text{AELFMRFACTOR}.$$

Where:

OPSUB = Operating Subsidy component after adjustment for local cost differences.

b. The modernization component, MOD, is calculated by two different methods, depending on whether the tribe had an Indian housing authority (IHA) that owned or operated more than 250 public housing units on October 1, 1997.

(i) MOD1 is calculated for all tribes and considers the number of Low-Rent, and Mutual Help and Turnkey III FCAS units. Each of these is adjusted by the national per-unit modernization subsidy

$$\text{MOD1} = [\text{LR} + \text{MH} + \text{TK}] * \text{MODPU}.$$

Where:

LR = number of Low-Rent units.

MH = number of Mutual Help units.

TK = number of Turnkey III units.

MODPU = national per-unit amount for modernization in 1996 adjusted for inflation (\$1,974 \* INF).

INF = adjustment for inflation since 1995, as determined by the Consumer Price Index for housing.

(ii) MODAVG is calculated only for tribes that had an IHA that owned or operated fewer than 250 public housing units on October 1, 1997, as the annual average amount they received for FYs 1992 through 1997 under the assistance program authorized by section 14 of the 1937 Act (not including emergency assistance). If this alternative calculation is greater than the amount calculated in (i), it is used to calculate the tribe's modernization component.

MODAVG = Average (FY 1992 to FY 1997) amount received by Section 14 of the 1937 Act.

If MODAVG > MOD1, MOD1 = MODAVG.

c. The modernization calculation is adjusted for local area costs:

MOD = MOD1 \* (TDC / NTDC).

Where:

TDC = Local Total Development Costs defined in § 1000.302.

NTDC = weighted national average for TDC, where the weight is the initial calculation of modernization amount of tribe with CAS.

4. Now that calculation for FCAS is complete, the amount allocated using the need component of the formula can be determined:

NEEDALLOCAMT = ALLOCAMT - MGHOLD - NATCAS.

Where:

NEEDALLOCAMT = amount allocated using the need component of the formula.

ALLOCAMT = amount available for allocation under the formula.

MGHOLD = amount held for allocation under minimum total grant provision.

NATCAS = national summation of FCAS allocation for all tribes.

5. The first step in calculating needs is identifying weighted needs variables and adjusting for local area cost differences.

a. The basic needs calculation uses seven weighted criteria based on population and housing data in a tribe's Formula Area or share of Formula Area if Formula Areas overlap (see § 1000.302 Formula Area and § 1000.326) to allocate the funds available for the needs component. The person count variable is adjusted for statistically significant undercounts for reservations, trust lands and remote Alaska and for changes in population since the latest Decennial Census.

$$\text{PERADJ} = \text{PER} * \text{UCFACTOR} * \text{POPCHGFACTOR}.$$

Where:

PER = American Indian and Alaskan Native (AIAN) persons as reported in the most recent Decennial Census.

UCFACTOR= 1+ the percentage undercount identified by the Census by type of land (in 2010 1.0488 for reservation and trust lands only and assumed also to apply to remote Alaska).

POPCHGFACTOR = the ratio of the most recent AIAN Census population estimate for county to the AIAN count for county from the Decennial Census.

The Population Cap provision in § 1000.302 Formula Area (5) is then applied. Needs data are capped if AIAN population counts exceed twice tribal enrollment unless a tribe can demonstrate that it serves more than twice as many non-tribal members as tribal members, in which case the cap is adjusted upward.

$$\text{POPCAPTEST}=1 \text{ if } \text{PERADJ} > \text{TEmultiplier} * \text{TE}$$

If POPCAPTEST=1, (tribes subject to Population Cap) then:

$$\text{PER} = \text{TEmultiplier} * \text{TE}$$

$$\text{POPCAPADJF} = \text{PER} / \text{PERADJ}$$

For tribes NOT subject to Population Cap,

$$\text{PER} = \text{PERADJ} \text{ and } \text{POPCAPADJF} = 1.$$

Where:

POPCAPTEST = an indicator showing whether a tribe's needs data must be adjusted downward because its Formula Area population is disproportionately large relative to tribe's enrollment,

TEmultiplier = 2, or a larger factor if justified by tribe on annual basis.

TE = Tribal enrollment.

POPCAPADJF = factor used to adjust household needs variables.

An initial calculation of the needs component is then calculated by determining each tribe's share of national totals on each variable, and applying weights to the variables as specified in regulation.

$$\text{BASENEED} = [(0.11 * (\text{PER}) / \text{NPER}) + (0.13 * \text{HHLE30} / \text{NHHLE30}) + (0.07 * \text{HH30T50} / \text{NHH30T50}) + (0.07 * \text{HH50T80} / \text{NHH50T80}) + (0.25 * \text{OCRPR} / \text{NOCRPR}) + (0.22 * \text{SCBTOT} / \text{NSCBTOT}) + (0.15 * \text{HOUSHOR} / \text{NHOUSHOR})] * \text{NEEDALLOCAMT}.$$

Where:

PER = count of AIAN persons after adjustments.

NPER = national total of PER.

HHLE30 = count of AIAN households less than 30% of formula median income multiplied by POPCAPADJF.

NHHLE30 = national total of HHLE30.

HH30T50 = count of AIAN households 30% to 50% of formula median income multiplied by POPCAPADJF.

NHH30T50 = national total of HH30T50.

HH50T80 = count of AIAN households 50% to 80% of formula median income multiplied by POPCAPADJF.

NHH50T80 = national total of HH50T80.

OCRPR = count of AIAN households crowded or without complete kitchen or plumbing multiplied by POPCAPADJF.

NOCRPR = national total of OCRPR.

SCBTOT = count of AIAN households paying more than 50% of their income for housing multiplied by POPCAPADJF.

NSCBTOT = national total SCBTOT.

HOUSHOR = a measure of housing shortage calculated as  $(HHLE30 + HH30T50 + HH50T80) - (LR + MH + TKIII)$

NHOUSHOR = national total of HOUSHOR.

NEEDALLOCAMT = amount allocated using the need component of the formula.

b. The basic needs calculation is adjusted to reflect differences in local area costs.

$NEED = BASENEED * (TDC / NATDC)$ .

Where:

TDC = Local Total Development Costs defined in §1000.302.

NATDC = average for TDC for all tribes weighted using BASENEED.

6. The need allocation computed above is adjusted to take into account the minimum needs provision. Tribes allocated less than \$200,000 under the FCAS component of the IHBG formula and that certify the presence of any households at or below 80 percent of median income in their Indian Housing Plan are allocated an additional amount so their needs allocation equals 0.007826 percent of the available appropriations for that FY after set-asides.

$MINNEED = APPROP * 0.00007826$ .

Where:

APPROP = current FY appropriation for the IHBG program less amounts in the Appropriations Act mandated for purposes other than the formula allocation.

If in the first need computation, a qualified tribe is allocated less than the minimum needs funding level, its need allocation will go up. Other tribes whose needs allocations are greater than the minimum needs amount will have their allocations adjusted downward to keep the total allocation within available funds:

If  $NEED < MINNEED$  and  $FCAS < \$200,000$  and income-based need has been identified in a tribe's IHP, then  $NEED1 = MINNEED$ .

If  $NEED \geq MINNEED$ , then  $NEED1 = NEED1 - \{UNDERMIN\$ * [(NEED1 - MINNEED) / OVERMIN\$]\}$ .

Where:

MINNEED = minimum needs amount.

UNDERMIN\$ = for all tribes qualifying for an increase under the minimum needs provision, sum of the differences between MINNEED and NEED1.

OVERMIN\$ = for all tribes with needs allocations larger than the minimum needs amount, the sum of the difference between NEED1 and MINNEED.

7. Whenever a new data source (see § 1000.331) is first introduced, provision is made to moderate extreme impacts through phase down adjustments. Tribes whose allocation under the need component decrease by more than ten percent in the first year of introduction will have that decrease moderated by subsequent adjustments, as required to prevent a drop of more than ten percent per year in the tribes' needs allocation attributable solely to the introduction of the new data source. A phase down adjustment schedule is calculated, containing adjustment amounts (PDADJ<sub>n</sub>) for the first and all subsequent FYs, based on the amount allocated to a tribe under the need component in the FY prior to the introduction of the new data source using the old data source. That is,

If  $NEED1NewDS < 0.9 * NEED1OldDS$ , then a tribe qualifies for a phase down adjustment (PDADJ) (see §1000.331(c)).

$PDADJ_n = ((0.9^n) * NEED1OldDS) - NEED1NewDS$ , where  $n = 1$  to  $\infty$  provided  $PDADJ_n > 0$  for at least one tribe.

Where:

NEED1NewDS = the amount the tribe would have received in the FY prior to the introduction of the new data source had the new data source been used to determine their need component in that FY.

NEED1OldDS = the amount a tribe actually received in the FY prior to the introduction of the new data source based on the old data source.

PDADJ<sub>n</sub> = the size of the adjustment that qualifying tribes will receive in each year n, where the n represents the number of years elapsed since the introduction of the new data source and is equal to one in the first year.

After allocation adjustments are made under § 1000.331 for a FY, the needs allocation of an Indian tribe whose needs allocation increased as a result of the introduction of a new data source shall be adjusted downward proportionate to its share of the total increase in funding resulting from the introduction of a new data source to keep the overall need component within available appropriations. For each tribe which benefitted from the introduction of the new data source, their share of the total gain is calculated and that share is used to determine the amount of contribution they will make in each year following the introduction of the new data source to allow the phase down adjustments to be made without exceeding the amount available for allocation.

If  $NEED1NewDS > NEED1OldDS$ , then tribe gained from the introduction of the new data source and contributes a portion of their gain to offset the phase down adjustments.

$$GAINSHR = (NEED1NewDS - NEED1OldDS) / TOTGAINYR1.$$

$$CONTRIB_n = GAINSHR * TOTPDADJ_n.$$

Where:

$NEED1NewDS$  = the amount the tribe would have received in the FY prior to the introduction of the new data source had the new data source been used to determine their needs funding in that FY.

$NEED1OldDS$  = the amount a tribe actually received in the FY prior to the introduction of the new data source based on the old data source.

$GAINSHR$  = a tribe's share of the total gains realized by all tribes that benefitted from the introduction of the new data source.

$TOTGAINYR1$  = the sum of the amounts that tribes gain from the introduction of the new data source in year one.

$CONTRIB_n$  = the size of the contribution that non-qualifying tribes give in each year  $n$ , where the  $n$  represents the number of years elapsed since the introduction of the new data source and equal to one in the first year.

$TOTPDADJ_n$  = the total amount in each year  $n$  required to cover the cost of phase down adjustments in that year, i.e.  $\sum PDADJ_n$ .

The initial needs allocation for each tribe is adjusted based on the phase down adjustments and contribution amounts in the phase down schedule.

$$NEED1PD = NEED1 + \_PDADJ_n - CONTRIB_n.$$

Where:

$NEED1PD$  = a tribe's allocation under the need component after applying the phase down adjustment schedule.

$NEED1$  = the initial calculation of need in the current FY from step 6 above.

$PDADJ_n$  = the size of the adjustment that qualifying tribes will receive in each year  $n$ , where the  $n$  represents the number of years elapsed since the introduction of the new data source and is equal to one in the first year.

$CONTRIB_n$  = the size of the contribution that non-qualifying tribes give in each year  $n$ , where the  $n$  represents the number of years elapsed since the introduction of the new data source and equal to one in the first year.

$PDADJ_n$  and  $CONTRIB_n$  as calculated in the initial phase down adjustment schedule may have to be adjusted downward in subsequent FYs if the total amount available for allocation under the needs Component (i.e.  $NEEDALLOCMT$  in Step 4) is lower than the amount available for that purpose in the FY prior to the introduction of the new data source. If so, both  $PDADJ_n$  and  $CONTRIB_n$  will be reduced by a factor which is the ratio of  $NEEDALLOCMT$  in current FY to  $NEEDALLOCMT$  in the year prior to the introduction of the new data source.

Furthermore, when the 2020 Decennial Census or other new data source is introduced, a new phase down adjustment schedule will be calculated in a similar manner as that was calculated for FY 2018.

8. A tribe's preliminary total allocation is calculated by summing the amounts calculated under the FCAS and need components that will serve as the basis for further adjustments in accordance with §1000.340.

$$GRANT1 = FCAS + NEED1PD.$$

Where:

$GRANT1$  = preliminary total allocation before applying 1996 Operating Subsidy and Modernization minimum funding (see Step 8), Undisbursed Funds Factor (see Step 9) and Minimum Grant provision (see Step 10).

$FCAS$  = Formula Current Assisted Stock component equal to  $OPSUB + MOD$ .

$NEED1PD$  = the Tribe's needs allocation after applying the phase down adjustment schedule.

$GRANT1$  is compared to how much a tribe received in FY 1996 for operating subsidy and modernization under the 1937 Housing Act. If a tribe received more in FY 1996 for operating subsidy and modernization than its IHBG formula allocation, its preliminary total allocation is adjusted up to the FY 1996 amount (See § 1000.340(b)). Indian tribes receiving more under the IHBG formula than in FY 1996 have their grant allocations adjusted downward to offset the upward adjustment for the other tribes.

$$TEST = GRANT1 - OPMOD96.$$

If  $TEST$  is  $\leq$  than 0, then  $GRANT2 = OPMOD96$ .

If  $TEST$  is greater than 0 and  $GRANT1 > MINNEED$ , then:



$$\text{GRANT2} = \text{GRANT1} - [\text{UNDER1996} * (\text{TEST} / \text{OVER1996})].$$

Where:

TEST = variable to decide whether tribes qualify for adjustments under 1996 minimum funding.

GRANT1 = preliminary total allocation before applying 1996 Operating Subsidy and Modernization minimum funding (see Step 8), Undisbursed Funds Factor (see Step 9) and Minimum Grant provision (see Step 10).

OPMOD96 = funding received by tribe in FY 1996 for Operating Subsidy and Modernization.

MINNEED = minimum needs amount.

UNDER1996 = for all tribes with TEST less than 0, sum of the absolute value of TEST.

OVER1996 = for all tribes with TEST greater than 0, sum of TEST.

GRANT2 = preliminary total allocation after applying 1996 Operating Subsidy and Modernization minimum funding (see Step 8) but before applying the Undisbursed Funds Factor (see Step 9) and Minimum Grant provision (see Step 10).

9. The initial allocation amount for the current FY is calculated by adding any adjustments for over- or under-funding occurring in prior FYs to the allocation calculated in the previous step. These adjustments typically result from late reporting of FCAS changes, or conveyances.

$$\text{REPGRANT} = \text{GRANT2} + \text{ADJUST1}.$$

Where:

REPGRANT = Initial Allocation Amount in current FY (see § 1000.342).

GRANT2 = preliminary total allocation after applying 1996 Operating Subsidy and Modernization minimum funding (see Step 8) but before applying the Undisbursed Funds Factor (see Step 9) and Minimum Grant provision (see Step 10).

ADJUST1 = adjustments for over- or under-funding occurring in prior FYs.

10. The Undisbursed Funds Factor is determined by subtracting the sum of each tribe's Initial Allocation Amount for the prior three FYs from the IHBG amounts in HUD's Line of Credit Control System (LOCCS) on October 1 of the FY for which the new allocation is being determined. If the undisbursed funds factor is > \$0 and the tribe's initial allocation for the FY exceeds \$5 million, its final allocation will be the initial allocation minus the Undisbursed Funds Factor or its 1996 minimum, whichever is greater. Reductions to the initial allocation amounts

due to the Undisbursed Funds Factor are summed and redistributed to other tribes in proportion to their initial needs allocation, NEED1PD, calculated above.

If  $\text{REPGRANT} \geq \$5 \text{ MILLION}$  and  $\text{UNDISB\$} > (\text{REPGRANTYR1} + \text{REPGRANTYR2} + \text{REPGRANTYR3})$ , then  $\text{UDFFtest} = 1$ .

Where:

$\text{REPGRANT} = \text{Initial Allocation Amount in current FY.}$

$\text{REPGRANTYR1} = \text{Initial Allocation Amount in one year prior to current FY.}$

$\text{REPGRANTYR2} = \text{Initial Allocation Amount in two years prior to current FY.}$

$\text{REPGRANTYR3} = \text{Initial Allocation Amount in three years prior to current FY.}$

$\text{UDFFTest} =$  is an indicator as to whether the tribe will give up a portion of its needs allocation due to an excessive amount of undisbursed funds.

For tribes whose  $\text{UDFFtest} = 1$ , a reduction will occur as follows:

$\text{REPGRANTaftUDFF} = (\text{GRANT2} - (\text{UNDISB\$} - (\text{REPGRANTYR1} + \text{REPGRANTYR2} + \text{REPGRANTYR3})))$

Except if,  $\text{OPMOD96} > (\text{GRANT2} - (\text{UNDISB\$} - (\text{REPGRANTYR1} + \text{REPGRANTYR2} + \text{REPGRANTYR3})))$  then,  $\text{REPGRANTaftUDFF} = \text{OPMOD96}$ .

Where:

$\text{REPGRANTaftUDFF} = \text{Initial Allocation Amount in current FY adjusted for the Undisbursed Funds Factor.}$

$\text{GRANT2} =$  preliminary total allocation after applying 1996 Operating Subsidy and Modernization minimum funding (see Step 8) but before applying the Undisbursed Funds Factor (see Step 9) and Minimum Grant provision (see Step 10).

$\text{UNDISB\$} =$  amount in HUD's LOCCS on October 1 of the FY.

$\text{REPGRANTYR1} = \text{Initial Allocation Amount in one year prior to current FY.}$

$\text{REPGRANTYR2} = \text{Initial Allocation Amount in two years prior to current FY.}$

$\text{REPGRANTYR3} = \text{Initial Allocation Amount in three years prior to current FY.}$

$\text{OPMOD96} =$  funding received by tribe in FY 1996 for Operating Subsidy and Modernization.

So the  $UDFFadj = REPGRANTaftUDFF - GRANT2$  and  $UDFFadjTOT =$  Absolute value of the sum of UDF adjustment for tribes subject to reduction.

If  $UDFFtest$  is not equal to 1, tribes receive a portion of the funds recovered under the UDF provision based on their share of total needs excluding any tribes with  $UDFFtest = 1$ . For these tribes, then:

$$UDFFadj = (NEED1PD / \sum Need1PD) * UDFadjTOT).$$

$$REPGRANTaftUDFF = REPGRANT + UDFadj.$$

Where:

$UDFFadj$  = amount of the Undisbursed Fund Factor adjustments. Negative amount represents excess undisbursed funds. Positive represents amounts being transferred to other tribes without excess undisbursed funds.

$NEED1PD$  = the Tribe's needs allocation after applying the phase down adjustment schedule.

$UDFFadjTOT$  = absolute value of the sum of Undisbursed Fund Factor adjustments for tribes that meet the criteria for reduction and is equal to the sum available for redistribution among other tribes based on their initial needs allocation.

$REPGRANTaftUDFF$  = Initial Allocation Amount in current FY adjusted for the Undisbursed Funds Factor.

$REPGRANT$  = Initial Allocation Amount in current FY.

11. A final adjustment is made under § 1000.329 which allocates available carryover amounts up to \$3 million to achieve minimum total allocations. Tribes that certify in their Indian Housing Plans the presence of any eligible households at or below 80 percent of median income and whose total allocation determined in the preceding step is less than 0.011547 percent of the FY appropriation after set-asides, will have their allocation adjusted upwards to 0.011547 percent of the FY appropriation after set-asides, or to a lesser percentage which can be achieved for all eligible tribes with available carryover funds set-aside for this purpose.

$$MINGRANT = APPROP * 0.0001547.$$

Where:

$APPROP$  = current FY appropriation for the IHBG program less amounts in the Appropriations Act mandated for purposes other than the formula allocation.

If  $(GRANT2 + UDFFADJ) < MINGRANT$  and income-based need has been identified in a tribe's IHP, then tribe qualifies for  $MINGRANTADJ$ . For Tribes that qualify, calculate:

$$MINGRTADJTEST = MINGRANT - (GRANT2 + UDFFADJ).$$

If the Sum for all tribes of  $MINGRTADJTEST < MGHOLD$ , then:

$$MINGRANTADJ = MINGRTADJTEST.$$

If the Sum for all tribes of  $MINGRANTADJTEST > MGHOLD$ , then:

$$MINGRANTADJ = MINGRANTADJTEST * (MGHOLD / \sum MINGRANTADJ)$$

Where:

$GRANT2$  is the approximate grant allocation in any given year for any given tribe.

$UDFFADJ$  = amount of UDFF adjustment.

$MINGRANT$  = Minimum total allocation established in §1000.329.

$MINGRANTADJTEST$  = amount required to bring all qualifying tribes' allocations up to the minimum total allocation amount. This amount can then be compared.

$MGHOLD$  = amount set-aside for allocation under minimum total grant provision (see Step 2).

$MINGRANTADJ$  = actual amount of the minimum grant adjustment that can be accommodated with the amount set aside from carryover for this purpose.

12. A tribe's final allocation consists of the initial current FY formula allocation with three adjustments.

$$FINALALLOCATION = GRANT2 + ADJUST1 + UDFFadj + MINGRANTADJ$$

Where:

$FINALALLOCATION$  = total amount a tribe is eligible to receive as a grant in the current FY.

$GRANT2$  = preliminary total allocation after applying 1996 Operating Subsidy and Modernization minimum funding (see Step 8) but before applying the Undisbursed Funds Factor (see Step 9) and Minimum Grant provision (see Step 10).

$ADJUST1$  = adjustments for over- or under-funding occurring in prior FYs.

UDFFadj = amount of the Undisbursed Fund Factor adjustments. Negative amount represents excess undisbursed funds. Positive represents amounts being transferred to other tribes without excess undisbursed funds.

MINGRANTADJ = actual amount of the minimum grant adjustment that can be accommodated with the amount set aside from carryover for this purpose.

Dated: November 4, 2016.

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Lourdes Castro Ramirez, Principal Deputy Assistant  
Secretary for Public and Indian Housing.

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Nani A. Coloretti, Deputy Secretary.

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